

HOUSE No. 3683

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the escrowing of withheld rent. .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	10th Essex
John W. Scibak	2nd Hampshire
Bruce E. Tarr	First Essex and Middlesex
Robert M. Koczera	11th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1216 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE ESCROWING OF WITHHELD RENT. .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8A of said chapter 239, as appearing in the 2004 Official Edition, is hereby
2 amended by striking out the second, third and fourth paragraphs and inserting in place thereof the
3 following 6 paragraphs:

4 At any time when a person is entitled to serve a notice to quit upon a tenant or occupant or is
5 otherwise entitled to commence a summary process action pursuant to this chapter, such person
6 may demand, in the notice to quit or by later demand, that the tenant or occupant pay into court
7 all unpaid rent or use and occupancy that is accruing or has accrued since the first day of the
8 sixth full calendar month prior to the date of service of the notice or later demand. Such amount
9 shall be paid within 5 business days following the date of service of the notice or later demand,
10 whichever is later; provided, however, that in the event that the tenant's or occupant's rent is
11 subsidized by any governmental agency or governmentally subsidized agency, the amount to be
12 paid shall be limited to only that portion of the rent paid by the tenant or occupant. Any notice to
13 quit or later demand submitted in accordance with this paragraph shall include a statement
14 indicating into which court the deposit shall be made. Such court may be any court which would
15 have jurisdiction over a summary process action against the tenant or occupant. The person
16 making such demand shall file with such court a copy of the notice to quit or later demand,
17 together with a statement under oath by the person who served such notice to quit or later

18 demand indicating how such service was made. Service of such notice to quit or later demand
19 shall be by any means permitted for service of a summary process complaint. Such court shall
20 have jurisdiction over all issues arising out of the demand for such deposit, which shall be
21 considered a separate action from any summary process action against such tenant or occupant
22 and shall be commenced by the filing of the copy of the notice to quit. The person making such
23 demand shall be the plaintiff. The tenant or occupant receiving such demand shall be the
24 defendant. Any notice to quit or later demand submitted in accordance with this paragraph shall
25 contain a statement of the agreed-upon rent rate heretofore payable, the subsidized tenant's or
26 occupant's portion of the agreed-upon rent rate, if applicable, and the amount of any and all
27 unpaid rent as defined and limited by this paragraph.

28 The defendant shall pay into court within 5 business days of service of the notice or later demand
29 the amounts so demanded under the previous paragraph and shall continue to pay into court
30 within 3 business days after its due date the agreed-upon rent rate or the unsubsidized portion
31 thereof that accrues during the pendency of the action demanding deposit in accordance with the
32 preceding paragraph or during the pendency of a companion summary process action; provided,
33 however, that the tenant or occupant may deduct any amounts, documented with copies of
34 receipts, that were reasonably spent by the tenant or occupant pursuant to section 127L of
35 chapter 111. Such copies of receipts shall be deposited in the same manner with the court in lieu
36 of payment. The defendant shall provide the court with the name of the plaintiff in the action
37 demanding deposit or in the companion summary process action. The defendant shall notify the
38 plaintiff in writing of the amounts so deposited and shall provide therewith copies, if any, of all
39 receipts deposited with the court according to this section.

40 If the plaintiff or the defendant believes the amounts demanded or deposited are in error and not
41 according to the requirements of the previous 2 paragraphs, either the plaintiff or the defendant
42 may request a hearing. The defendant shall request such hearing not later than the date on which
43 the demanded deposit is due in court. The plaintiff shall request such hearing within 3 business
44 days after receipt of the notice from the defendant of the amount deposited. The hearing shall be
45 requested in writing to the clerk of the court and may be mailed. The hearing shall be scheduled
46 by the court for a date not later than 10 calendar days after the court's receipt of the hearing
47 request. At the hearing, the court shall consider only arguments pertaining to the agreed-upon
48 rent rate, a subsidized tenant's or occupant's portion of the agreed-upon rent rate, the amounts

not paid since the first day of the sixth full calendar month prior to the date of service of the notice or later demand and any documented deductions pursuant to said section 127L of said chapter 111, as required by the previous 2 paragraphs. After hearing arguments only relative to the amounts required by the previous 2 paragraphs, the court shall determine the escrow amount and order its payment or refund by the close of the next business day after the hearing. The court shall order the determined amount to be paid into court or any excess previously deposited to be refunded by the court not later than the close of 5 business days after the hearing. In the event that a hearing on the amount demanded or deposited has been requested, the eviction trial date and any companion summary process action shall be scheduled not later than the next regular trial date that occurs after 5 business days following the hearing.

If the defendant fails to comply with any portion of this section, any claims, counterclaims or defenses asserted under this section shall be dismissed and shall not be considered in the hearing on the plaintiffs companion summary process action, which shall commence on the original trial date or as provided in the previous paragraph. Nothing in this section shall prevent the tenant or occupant from maintaining a separate action for damages regarding the habitability or condition of the premises.

Amounts deposited with the court under this section shall be paid over by the clerk of the court in accordance with a written out-of-court agreement between the plaintiff and the defendant provided that their signatures are duly notarized, or if the parties cannot agree, then the amounts deposited shall be paid to the plaintiff or the defendant as the court directs upon final disposition of the action. Before final disposition of the action, if the court so orders, any amounts so deposited shall be paid to the plaintiff to make repairs to the premises that are required by law or to mitigate financial hardship to the plaintiff. If, within 1 year of the commencement of an action demanding deposit in accordance with this section, no summary process action is initiated against the tenant or occupant arising out of the notice to quit, or at any time when the tenant fails to make ongoing monthly deposits in accordance with this section, the court may, upon motion of either party, order any such deposit to be distributed in such manner as it would have been distributed in a summary process action concerning rent due for such land or tenements. Whenever any counterclaim or claim of defense under this section is based on any allegation concerning conditions affecting the premises or services or equipment provided therein, the tenant or occupant shall not be entitled to assert such counterclaim or claim of defense unless:

(1) (a) the board of health or other local enforcement agency has certified that such conditions constitute a serious violation of the standards of fitness for human habitation as established in the state sanitary code, the state building code or any other law, ordinance, by-law, rule or regulation establishing such conditions; (b) the plaintiff received such certification prior to the date that the tenant or occupant received the notice to quit or the notice terminating the tenancy;

(2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under the tenant's or occupant's control, except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused;

(3) the premises are not situated in a hotel or motel, or in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than 3 consecutive months;

(4) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated; provided, however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief under this section when the premises are temporarily vacated for purposes of removing or covering paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to said chapter 111; and

(5) the tenant or occupant has complied with all provisions of this section regarding deposit of past and accruing rent as defined herein.